IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 27910 of 2004(V)

PETITIONER:

G.VINAYACHANDRAN @ VIJAYACHANDRAN,
S/O.GOPALAN, AGED 60, R/A. T.C.2/1306,
CHANDRA VIHAR, GOWREESAPATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.S.A.NAGENDRAN(SR.)
SRI.PREMJIT NAGENDRAN
SMT.K.B.SUBHAGAMANI

RESPONDENTS:
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1. LEELAKUMARI, AGED 59, W/O.LATE
N.BHASKARAN, R/A. BLOCK NO.105, TAO CHING ROAD,
705-143, SINGAPORE 2261.

2. SARACHANDRAN, AGED 33, S/O.LATE
N.BHASKARAN, DO. DO.

3. PREMACHANDRAN, AGED 32, S/O.LATE
N.BHASKARAN, DO. DO.

4. JAYACHANDRAN, AGED 30, S/O.LATE
N.BHASKARAN, DO. DO.

5. V.LATHA CHANDRAN, AGED 28, D/O.LATE
N.BHASKARAN, DO. DO.

6. PROF.B.P.LEELAMMA, D/O.JOSEPH PEREIRA,
AGED 54, R/A. T.C.12/302, KRIPA, PLAMOODU,
THIRUVANANTHAPURAM.

R3 BY ADV. SRI.K.B.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF PLAINT IN O.S. 219/01 BEFORE MUNSIFF COURT, THIRUVANANTHAPURAM DATED 1.2.01.

EXT.P2 TRUE COPY OF COMMISSION APPLICATION IN OS 219/01 BEFORE MUNSIFF COURT, THIRUVANANTHAPURAM DATED 22.6.04.

EXT.P3 TRUE COPY OF ORDer IN IA 5519/04 IN O.S. 219/01 BEFORE MUNSIFF COURT, THIRUVANANTHAPURAM DATED 24.6.04.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 27910 OF 2004

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Dated this the 1st day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Ext.P3 order passed in I.A.5519/04 in O.S.219/01. The plaintiff herein filed an application for issuance of a Commissioner to ascertain the value of improvements in the property. The trial court disallowed the prayer that the ascertaining the value of improvements is not necessary.

2. The learned counsel for the writ petitioner had taken me through the issues framed in the case and the Court has framed additional issue No.7, whether the plaintiff is entitled to get value of improvements as prayed for in the plaintiff. If the plaintiff is entitled to get the value of improvements, certainly appointment of Commissioner is necessary so as to ascertain the value of improvements.

3. On the other hand, the learned counsel for the respondents would submit that the plaintiff is not entitled to the value of improvements at all. So the question of assessing the value of improvements does not arise. Since the Court has

specifically raised the issue regarding the entitlement of the plaintiff to get he value of improvements, I feel, in the fitness of things it is only just to direct the trial court to consider that issue first and enter into a finding and in case the finding is to the effect that the plaintiff is entitled to the value improvements then the writ petitioner is at liberty to move an application for issuance of a Commission.

The trial court is also directed to dispose of the said issue within a time frame of three months from today and the suit as expeditiously as possible.

The writ petition is disposed of as above.

M.N. KRISHNAN, JUDGE.

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